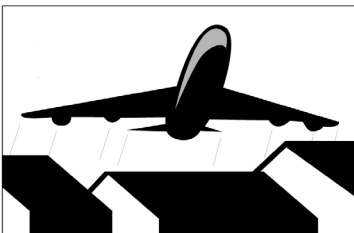


**Testimony of**  
**Joseph V. Karaganis**  
**Counsel**  
**Suburban O'Hare Commission**

**Before**  
**The Committee On The Judiciary**  
**House of Representatives**  
**United States Congress**

**Oversight Hearing On**  
**The State of Competition in the Airline Industry**  
**June 14, 2000**



**SUBURBAN O'HARE COMMISSION**

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Mr. Chairman, Ranking Member Conyers, members of the Judiciary Committee. Thank you for the opportunity to present the views of the Suburban O'Hare Commission to the Judiciary Committee on the problem of Fortress Hub monopoly in the airline industry. My remarks here today are not directed at the proposed United/US Air merger and the likely domino mergers of American, Northwest, Delta and others in a spasm of mega-mergers likely to follow. That those proposed and prospective mergers should be rejected as monopolistic should be self-evident.

Instead I ask this Committee to focus on the situation in the Fortress Hub world as we know it today. I have just finished participating in a study of the Fortress Hub system on a national scale — with metropolitan Chicago as a case study — to determine whether the existing Fortress Hub violates federal antitrust laws. The results of that study are detailed in a report by the Suburban O'Hare Commission (SOC) entitled *If You Build It, We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market*. I believe a copy of that report has been made available to members of the Committee and I will not repeat the specific details here.

I would like to summarize the findings and recommendations of the SOC study. SOC's major findings include:

- There is *de facto* arrangement among the “Big Seven” airlines — Northwest, United, American, Delta, US Air, Continental and Trans World — not to compete in each others hub market — the Fortress Hub system.
- Fortress Hub Monopolies are costing American air travelers billions of dollars annually in monopoly-induced higher fares, especially the fares charged to time-sensitive business travelers. The cost of Fortress O'Hare monopoly to Chicago area travelers is several hundred million dollars per year.
- The Big Seven's geographic market allocation violates the nation's antitrust laws — based on clear and repeated Supreme Court decisions which have condemned arrangements to carve up geographic markets horizontally.

- In Chicago, the clear violation of the antitrust law is demonstrated by the abandonment by major airlines of meaningful competition with United and American at O'Hare and the announcement that they would not use a South Suburban Airport if built.
- Chicago and its officials are not immune from antitrust law liability for helping the major airlines avoid competing with the United/American cartel at O'Hare.
- Federal taxpayer funds may have been used to suppress competition and violate antitrust laws in the Chicago market.
- The Clinton administration has not only looked the other way in not bringing antitrust enforcement action to break up the Fortress Hub system, but has affirmatively assisted Chicago and United and American in blocking significant new competition from entering the region by blocking development of a new regional airport in metro Chicago.
- Billions in federal taxpayer subsidies are being used to expand United and American's Fortress Hub monopoly at O'Hare. The federal DOT is ignoring the antitrust problem in authorizing and distributing federal subsidy dollars for airport construction.
- The lifting of slot limitations will not allow significant competition to enter the Chicago market. Instead — as predicted by Senator Fitzgerald and Congressman Hyde and Congressman Jackson — the lifting of the slots will be accompanied by massive increases in delays and by United and American simply expanding their monopoly control at the airport.
- Construction of a new runway for "delay reduction" is simply a subterfuge to expand the size of United and American's Fortress Hub operation at O'Hare. Building a new runway at O'Hare will make the monopoly problem — and resultant air fare overcharges — even worse. Moreover, it will doom the economic viability of the new South Suburban Airport.

Based on these findings, SOC recommends:

- An investigation by the U.S. Attorney General and U.S. Attorney for Northern Illinois into activities by the airlines, the city of Chicago, consultants and other third parties which have been used to protect and expand the Fortress Hub system nationally — and in particular to prevent new airport development in the metro Chicago region.
- A civil action by the Attorney General and U.S. Attorney here to break up the Fortress Hub system and to compel the major airlines to stop their refusal to compete in metro Chicago.
- Action by state Attorneys General to recover treble damages for fliers who were charged billions of dollars in excess fares as a result of the Fortress Hub system.

- A Government Accounting Office and Department of Justice audit of federal taxpayer funds or subsidies that abetted the antitrust violations, particularly efforts to kill the South Suburban Airport.
- Governor Ryan should hold fast to his promise not to permit any additional runways at O'Hare. To allow additional runways would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring new competition into the region by the South Suburban Airport.
- The withholding of U.S. Transportation Department of any more federal funds for expansion of the United and American duopoly at Fortress O'Hare and a reformulation of federal policy for federal taxpayer subsidies for airport development to insure expansion of competition.
- A clear statement by Republican and Democratic candidates for President to state their positions on Fortress Hubs, especially O'Hare and the role of the federal government in either breaking up Fortress O'Hare or building new capacity for new competition at the South Suburban Airport.

Subsequent to the issuance of the SOC report, there were two noteworthy events that merit the Committee's attention. First, the venerable *Chicago Tribune* openly acknowledged what we have all known: The major airlines have colluded to establish a monopolistic Fortress Hub system and that this Fortress Hub monopoly system imposes huge overcharges on the business traveler.

Second, the same *Chicago Tribune* recently published a major article detailing the deceptions which have taken place in the joint Chicago/airline campaign to defeat a new airport and to prevent new competition from entering the region.

I ask that both articles — along with two related articles from the *Southtown Economist* — be placed in the record.

Finally, let me make a few unsolicited suggestions that may assist the Committee and the Department of Justice in their efforts in this matter:

- Retain a lawyer of David Boise's talent and skill to head up the investigation and any enforcement action. The same talent, energy, and creativity which the Department of

Justice directed at the Microsoft matter should be directed at the Fortress Hub monopoly.

- Subpoena the records of the Air Transport Association on these matters. The ATA has apparently been a major vehicle for developing and enforcing the Fortress Hub system and preventing new airport development.
- Subpoena the records of the airlines on these matters. Do it now and soon to avoid destruction of documentary evidence.

# Chicago Tribune

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## Editorials

# The O'Hare conspiracy theory

Are the airlines conspiring to gift two of their major players with a monopoly in Chicago?

That's the indictment brought by Rep. Henry Hyde, Rep. Jesse Jackson Jr. and the Suburban O'Hare Commission, a collection of northwest suburbs fighting to stem air traffic at O'Hare and build a competing airfield in the south suburbs.

They charge that the other major airlines' refusal to compete in the Chicago market against United Airlines and American Airlines amounts to a violation of federal antitrust law.

They have an interesting argument. They may not have enough evidence to justify their call for a Justice Department investigation, but they're dead right on the point.

It sure looks like Mayor Richard Daley, the U.S. Department of Transportation and the major airlines have conspired to do all they can to block the development of a new airport in Chicago. They've done so even though O'Hare has been stretched to capacity, even though projections show there is great potential for growth in air travel here, growth that would bring dollars and jobs to the region.

Why would all these players do something that stalls economic growth here?

Daley wants to preserve and protect O'Hare, which is one of the city's prime economic engines and is run by the mayor and the mayor alone.

The Department of Transportation, as a wholly owned subsidiary of the Democratic administration in the White House, wants to please the mayor of Chicago.

The airlines? It's easy to understand why United and American oppose a new airfield. They control 83 percent of the traffic at O'Hare. They have that airport locked up, and that's good for business. They don't want competition.

But what about the other major airlines that are largely locked out of O'Hare? Why aren't they screaming for an opportunity to compete in the nation's third largest market?

Good question. Not one major airline has stepped forward and shown any interest in operating at a new field in Chicago. In fact they have vigorously fought building a new facility. Sixteen airlines signed a letter in 1995 declaring they "oppose further planning and construction" of an airport. The letter was almost threatening in nature, warning that proceeding with a south suburban airport without the airlines' support "could pose significant risks" to the state.

Why would they *fight* the chance to compete?

The Suburban O'Hare Commission contends there is a tacit agreement among the airlines not to compete

with each other in their hub cities. They have divvied up the nation—Delta gets Atlanta, American gets Dallas, Northwest gets Detroit, etc. They won't step on each other's turf, lest someone step on theirs.

Chicago is marginally better off than the many cities that have one dominant airline. Chicago has two, United and American. But combined, they dominate O'Hare. The recent announcement that six small airlines will get to add service at O'Hare only underscores the point: The added flights from those six airlines will account for just 2.4 percent of O'Hare traffic.

The result of the duopoly at O'Hare is little competition and higher airfares. O'Hare travelers, particularly business travelers who book last-minute flights, pay some of the highest fares in the land.

If the airlines are engaging in some subtle collusion in Chicago, they have a co-conspirator on the 5th floor at City Hall.

Although Chicago has encouraged competition among low-cost airlines at Midway Airport, O'Hare has largely been reserved for United and American. City Hall has steered the \$3.2 billion World Gateway program, an ambitious and worthwhile upgrading of O'Hare. But City Hall stands in the way of a third airport that would be outside its borders and its control.

For its part, hands aren't clean at the Suburban O'Hare Commission. The group has rightly pressed for a new airport, but it has opposed any O'Hare expansion. That, ultimately, will have to be the political solution to this stalemate: an agreement for a south suburban airport and for new runways at O'Hare.

That solution, though, still seems far, far away.

Last week, the Department of Transportation took a step toward building a new airport. The agency finally approved the state's long-stalled request to prepare an environmental impact statement on a south suburban airport.

But even that approval was couched in classic federal bureaucratic gobbledygook. The letter—from the deputy associate administrator for airports—says the state can go ahead. But it can also expect this to be just the first in a long line of environmental impact statements that will be required before the FAA ever deigns to allow Chicago to meet its aviation demand.

Aviation will be one of the most critical economic issues to confront the Chicago region in the near future. Yet aviation is caught up in a maddening web of bureaucracy, political games—and yes, it seems, a gentleman's agreement among airlines to cede Chicago to United and American.

That's a good deal for two airlines. And a rotten deal for the 8 million people who live and work here.

JUNE 10, 2000

# Daily Southtown

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## EDITORIALS

# Chicago's airport war

Memos filed in suit  
show city's campaign  
to hide Peotone need

**N**orthwest suburban opponents of expansion at O'Hare International Airport filed documents in DuPage County Circuit Court this week that reportedly give details of a "guerrilla war" by Chicago officials to discredit the Peotone airport proposal and hide planning for more runways at O'Hare.

The documents, which reportedly include a slew of memos from the city's own aviation consultants, were sealed from public scrutiny on Thursday by Judge Bonnie Wheaton. Wheaton refused to explain why she was sealing the documents.

A lawyer for the expansion opponents said a Chicago Tribune story about the documents was "accurate," but declined to say any more because of Wheaton's order.

The newspaper story described memos by consultants for Chicago suggesting that accurate projections of growth in airline traffic in Chicago would put the city

in a position where it would have to support expansion of O'Hare or construction of a third airport. O'Hare expansion is adamantly opposed by the airport's neighbors, and the story suggested that city officials decided to hide their plans rather than deal with the political heat that would result.

At the same time they conducted a campaign to discredit the Peotone plan, a campaign described in one memo as a "guerrilla war."

Chicago Mayor Richard Daley has been antagonistic to the Peotone plan ever since he abandoned his own plan for a third airport at Lake Calumet. The city campaign is no surprise in that respect, although some may be startled to learn there are memos providing black-and-white proof of the city's efforts.

The documents filed Thursday provide one more reason the Federal Aviation Administration should allow feasibility studies of Peotone to proceed — studies that have been blocked by Daley under the premise that "regional consensus" is needed before the process can resume.

# Suit exposes Chicago's anti-Peotone campaign

DAILY SUN-BEAM 6/11/00

Chicago set out on a campaign of misinformation and lies to mislead the public about the growing need for a third airport.

Memos and reports revealing the city's plans have been placed under seal by a DuPage County judge in a lawsuit filed by opponents of O'Hare International Airport expansion.

As part of its campaign against the proposed Peotone airport, the city fabricated airline passenger projections for Chicago, releasing numbers far below those of the Illinois Department of Transportation and other government agencies.

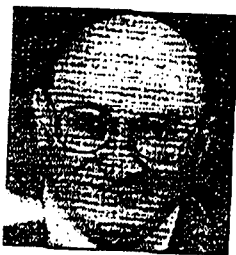
In response to a consultant's report showing rapid growth in passenger traffic, the Chicago Tribune reported that a city aviation official wrote in a memo: "This puts us in a box. The only response is to build out O'Hare or support a new airport."

Nearly two years ago, I became convinced that Mayor Richard Daley was not telling the truth when he said the city was doing nothing behind the scenes to block construction of a third airport.

When the FAA eliminated the Peotone site from its list of future airport projects, it cited a lack of "regional consensus."

I asked FAA officials if they had ever before used the regional consensus guideline in determining whether a new airport should be built in this country.

After weeks of stalling, an FAA official finally told me, "Write what you want because we can't find any other record of regional consensus being used."



**Phil Kadner**

More recently, I wrote about U.S. Rep. Jesse Jackson Jr.'s efforts to get the U.S. Department of Transportation to lift the regional consensus mandate.

His staff thought an agreement had been reached with the federal transportation secretary, who had agreed to fly out to Chicago and meet with Jackson and Peotone supporters.

Jackson was so sure that something important would happen that he arranged for a news conference following the meeting.

But to Jackson's obvious surprise and embarrassment, the transportation secretary said he thought regional consensus was a great idea when it came to Peotone, although expansion of O'Hare would not have to meet the same standard — just in case northwest suburban governments thought the federal government might care about their objections.

Sources later explained that when Mayor Daley's brother, the secretary of commerce, heard about the Jackson meeting with the U.S. secretary of transportation he pitched a fit.

A message was delivered that if the federal government did anything to put Peotone back on track, Vice President Al Gore's presi-

dential campaign would suffer in Chicago.

So the U.S. transportation secretary never made the announcement expected by Jackson.

Some people legitimately believe that Peotone is not the best site for a third airport. Others, particularly those living near Peotone, just don't want to live in the traffic pattern of an airport.

I understand their concerns.

But the most important question has never been seriously addressed because of Chicago's attempts to manipulate the process.

Does the Chicago region need a new airport to maintain its position as a transportation center?

When opponents of O'Hare expansion sought documents that they felt would demonstrate the city had manipulated the process, the city refused to hand over its files.

Finally, the Illinois Supreme Court ruled that the documents had to be turned over.

Now a judge has blocked public access to the documents, which allegedly reveal a five-year campaign of guerrilla warfare by the city against the Peotone site.

The public has a right to know if that is the case.

The arguments over O'Hare expansion and the need to build a third airport affect the lives of millions of people.

The economy of the entire region could be affected.

If the City of Chicago used its resources to undermine the public trust, the court ought to use its position to set the record straight.

There are no issues of national security at stake.

These are documents produced at public expense to which citizens would be entitled under the Illinois Freedom of Information Act.

Another journalist once said, "Obviously a man's judgment cannot be better than the information on which he has based it. Give him the truth and he may still go wrong when he has the chance to be right, but give him no news or present him only with distorted and incomplete data ... with propaganda and deliberate falsehoods, and you destroy his whole reasoning process as ..."

DuPage County Circuit Court Judge Bonnie Wheaton, a Republican, has it in her power to let the truth be known.

By assisting Chicago in its cover-up, she is aiding and abetting in the corruption of the democratic process.



Chicago Tribune, Thursday, June 8, 2000

# Memos suggest city hid plans to expand O'Hare

By Andrew Martin  
and Laurie Cohen

TRIBUNE STAFF WRITERS

A mountain of documents obtained by opponents to expansion at O'Hare International Airport suggest that even while Chicago officials protested that they had no plans to build new runways, they secretly were developing and reviewing proposals to do exactly that.

The records, which are expected to be filed Thursday in DuPage County Circuit Court as part of a lawsuit brought by suburban opponents of O'Hare noise, lift the curtain on behind-the-scenes maneuvering by Chicago officials as they attempt to block the construction of a third regional airport at Peotone while maintaining O'Hare's status as the Midwest's leading transportation hub.

The documents do not say that city officials have signed off on new runways as a way to keep O'Hare's competitive edge. But they suggest that the city's World Gateway Program, a \$3.7 billion terminal expansion that was announced last year, is part of a larger vision that does include new runways.

Dubbed the Integrated Airport Plan, the previously undisclosed proposal is strikingly similar to the World Gateway Program with a crucial exception: It calls for the construction of an unspecified number of new runways in about a decade.

And the records show that since 1987 Chicago's own consultants have privately insisted

that O'Hare needs new runways to handle potential passenger demand at the same time city officials have publicly sought to discredit that notion. The only alternative, the consultants say, is a third airport.

The documents also provide a rare, behind-the-scenes glimpse into the way city officials try to sway public opinion and minimize political fallout. One memo by a city consultant states that the city has engaged in a "protracted guerrilla war" to thwart attempts to build the Peotone airport.

Another memo by a city consultant warns that the city has made 'disingenuous' claims to hide plans to expand O'Hare's capacity. Other documents suggest the city and its consultants fudged projected growth numbers at O'Hare to mask the need for new runways.

For example, the city's longtime aviation planning consultant, Cincinnati-based Landrum & Brown, predicted in internal documents in 1995 that by 2020, 69 million passengers a year would want to board planes at O'Hare. But in 1998, in forecasts that formed the basis for the publicly released World Gateway Program, the consultant revised the figure to 49 million. Last year, 36.3 million passengers boarded flights at O'Hare.

The documents do not explain the discrepancy between the 1995 and 1998 forecasts. Efforts to contact Landrum & Brown officials were unsuccessful.

"This puts us in a box," airport staffer Petey Getzels complained in a memo regarding similarly high 1993 growth forecasts by the

consulting firm. "The only response is to build out O'Hare or support a new airport. We are trying to forestall this decision."

Gil Jimenez, a spokesman for the city's Aviation Department, declined to comment on the documents because of the pending litigation.

The World Gateway Program does not call for new runways but includes two new terminals designed to handle large modern jets and relocation of a major heating and air conditioning plant to make room for the buildings.

Chicago officials also have defended their published forecasts of passenger demand at O'Hare, noting that the city's numbers are in line with those of the Federal Aviation Administration.

Chicago attorney Joseph Karaganis said he plans to file the documents Thursday in connection with a motion for a preliminary injunction to halt construction at O'Hare without state approval.

Karaganis represents three northwest suburbs, DuPage County and the DuPage County state's attorney's office, which together sued the city in 1995, accusing it of having broken the law by failing to obtain certificates of approval from the state Department of Transportation for O'Hare development projects. Chicago, which owns the airport, contends state approval is needed only for runway projects.

The suit has dragged on partly because of the city's attempt to block the documents' release. The Illinois Supreme Court eventually ordered the city to turn over the documents to Karaganis at the end of 1998, and some of them have already been disclosed.

In the past, city officials have tried to portray Karaganis as a conspiracy theorist who saw plans for new runways where there were none.

But the stack of documents to be filed Thursday indicates the city has misled the public about the need for new runways at O'Hare in an apparent attempt to quell the political furor they would cause.

Landrum & Brown described the city's "terrible dilemma" in a Jan. 5, 1993, memo to David Mosena, then aviation commissioner, obtained from city files.

In the late 1980s, "the city recognized that additional airfield capacity would someday be needed in the Chicago region," the memo said. "There were only three possibilities for providing that additional capacity: new runways at [O'Hare], new runways at [Midway] or a third airport."

But, the memo continued, the city knew new runways at Midway were out of the question because of space constraints and "was unwilling to incur the political heat that would accrue to any suggestion that new runways were being con-

sidered" at either airport. "Thus the city was forced to argue from the position that new capacity was not and would not ever, in the foreseeable future, be required in the Chicago region."

Using this argument, the memo went on, "the city has conducted a protracted but successful guerrilla war against the state forces that would usurp control of the city's airports by launching development of a new airport in the southwest suburbs and creating a regional airport authority..."